case

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Juneau Area Office
P. O. Box 3-8000
Juneau, Alaska 99802

July 25, 1989

Mr. Michael Walleri
Tanana Chiefs Conference
201 First Avenue
Fairbanks, Alaska 99701

Dear Mr. Walleri:

On June 28, 1989, we received a memorandum from the Fairbanks Agency forwarding Koyukuk's request to reorganize as an IRA and adopt a constitution.

It is evident that the instructions for processing requests for elections to adopt constitutions or constitutional amendments from Alaska Natives that was issued by the Assistant Secretary-Indian Affairs on June 9, 1988, were not followed verbatim; however, we plan to proceed with the tribal request in order to abide by the spirit and intent of the recent amendments to the Indian Reorganization Act of 1934.

Before we provide the tribe with our analysis and suggestions regarding their proposed constitution, I should point out that we cannot consider this to be a complete request until such time that our office has been provided and has approved a list of the qualified voters of Koyukuk. I notice that you have advised Koyukuk not to resubmit a modified constitutional proposal until it has been reviewed by the Central Office. I sincerely hope that the tribe does not take this advice literally since the main reason for Agency and Area reviews of proposed constitutions is to ensure that the Central Office only has to determine whether provisions of proposed constitutions are in violation of federal law.

The following is our analysis and suggestions regarding the proposed constitution for Koyukuk (constitution enclosed):

Preamble

Since the Indian Reorganization Act of June 18, 1934 was amended again in 1988, you may wish to revise reference to it by stating "We, the Alaska Natives, having a common bond of residence in the neighborhood of Koyukuk, Alaska, do ordain and establish this Constitution in accordance with and by authority of Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended."

Article II - Territory

The proposed definition is too vague. It could conceivably entail all of the Indian country in the United States of America. I suggest that this definition be made more precise.

Article III - Membership

The means by which a person might lose tribal membership should be spelled out in the Constitution. This issue could possibly affect all the tribal members; therefore, they should be allowed to make the decision rather than an elected representative body such as the "council."

The Article also calls for Secretarial approval of the tribe to extend tribal membership to non Indians for "community purposes." Since the Secretary has no authority to take such action, I suggest that this subject be deleted.

This Article also calls for Secretarial review of tribal ordinances and resolutions. Does the tribe know that this means that their ordinances and resolutions would not be affective until such time that the Bureau approved of them? This proviso is not mandatory and would cause delays in the tribe's self government. The tribe should decide whether they wish that provision to be a part of their constitution.

Article V - Elections

Article IV of this proposed constitution establishes a council of seven (7) members; however, this Article only calls for the election of 5 council members. I suggest that this discrepancy be resolved.

Article VI - Removal, Recall, and Forfeiture

The third sentence in Section 1 of this Article starts out by stating "...If the accused is a member of the council..." This phrase appears superfluous in that this Article only addresses council members. I suggest that it be deleted.

Section 1 should be revised since it appears to have contradictory provisions. This Section states that a councilman who may be subject to removal must be given a written statement of the reasons for his or her removal at least 10 days before such a council meeting is called for; however, it also states that an accused council member shall have 10 days to answer any such charges 10 days before such a meeting is called for.

Section 3 of this Article appears to be an incomplete sentence.

Article X - Rights of Members

We suggest that the provisions of the Indian Civil Rights Act be spelled out in order that tribal members may have a ready reference to their individual rights protected by that Act.

Article XI - Duties of Officers

Does the tribe wish for the Second Chief to assume the other duties of the First Chief in addition to presiding at council meetings, e.g. execute contracts, leases, etc.? If so, this Section should be revised.

I notice that this proposed constitution does not provide for a savings clause. A savings clause eliminates uncertainty about the validity of ordinances and resolutions enacted before the effective date of a new governing document. The tribe should consider whether they wish to include such a provision in their proposed constitution.

We hope that you and the tribe find our observations and recommendations helpful. Please provide us with the tribe's responses to this letter, along with a copy of their proposed constitution in order that we can forward their request to the Central Office.

Again, please be advised that a Secretarial Election will not be authorized until the tribe submits a roll of adult members that the Area Office can approve.

George A. Walters

Enclosure: 1

cc: Fairbanks Agency Superintendent
Leo Lomitz, Chief of Koyukuk
Iris Ann Drew, ODAS-IA (Tribal Services)

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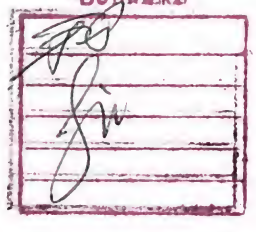

CONSTITUTION
OF THE
NATIVE VILLAGE OF KOYUKUK

PREAMBLE

We, the Alaska Natives, having a common bond of residence in the neighborhood of Koyukuk, Alaska, do ordain and establish this Constitution in accordance with and by authority of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended, by the Act of June 15, 1935 (49 Stat. 378), and May 1, 1936 (49 Stat. 1250).

ARTICLE I - NAME

The name of this organization shall be the Native Village of Koyukuk.

ARTICLE II - TERRITORY

The territory and/or jurisdiction of the Native Village of Koyukuk shall extend to such Indian country, as defined by Federal law.

ARTICLE III - MEMBERSHIP

Section 1. Basic Membership. The basic membership of the Native Village of Koyukuk shall consist of all Alaska Natives whose names appear on the roll of Native Village of Koyukuk approved by the Secretary of the Interior on _____; provided that, the council may correct the basic membership roll within two (2) years from the effective date of this constitution subject to the approval of the Secretary of the Interior.

Section 2. Qualifications for Membership. Any persons of at least one-quarter (1/4) degree Alaska Native or other federally recognized American Indian blood who meets any of the following qualifications shall be eligible to be a member of the Native Village of Koyukuk:

(a) has physically resided in Native Village of Koyukuk, Alaska, for a period of at least one (1) year immediately prior to the date of application for membership; or

(b) is descended from an enrollee to Koyukuk under:

1. the terms of the Alaska Native Claims Settlement Act, as amended; or
2. the basic membership roll approved by the Secretary of the Interior pursuant to Section 1 of this Article.

Section 3. Regulation of Membership. The council shall have the power to enact ordinances and resolutions, not inconsistent with this constitution and subject to the review of the Secretary of the Interior, prescribing rules and regulations governing membership, including application and appeal procedures, loss of membership, and adoption of members. The council shall have the power to adopt ordinances, subject to approval by the Secretary of the Interior, to extend the privilege of membership for community purposes to persons not otherwise eligible under Section 2 of this Article. Such persons shall not be entitled to hold elective office or vote in village elections pursuant to this constitution. Nor shall such persons be considered Natives or "Indians" for purposes of entitlement to or participation in any federal benefits or programs which are extended to persons by virtue of their status as Indians.

ARTICLE IV - GOVERNING BODY

Section 1. Name. The governing body of the Native Village of Koyukuk shall be the Koyukuk Village Council, hereinafter referred to as the council.

Section 2. Composition. The council shall consist of seven (7) members who shall be elected by a majority vote of the qualified members of the village.

Section 3. Officers. The council shall include a First Chief, Second Chief, Secretary/Treasurer, and four (4) council members.

ARTICLE V - ELECTIONS

Section 1. Voter Qualifications. Any duly enrolled member of the Native Village of Koyukuk eighteen (18) years of age or older and who has resided for at least one (1) year in the village prior to an election shall be entitled to vote in that village election.

Section 2. Election. The first election of officials under this constitution shall be held within sixty (60) days of the effective date of this constitution, at which time a system of staggered terms shall be established. At the first election under this constitution, the First Chief, the Secretary/Treasurer and one (1) council member shall be elected to hold office for a term of two (2) years. The Second Chief and one (1) council member shall be elected to hold office for the term of one (1) year. Thereafter, all terms of office shall be for two (2) years. Members shall hold office until their successors are duly elected and seated.

Section 3. Nominations. The time, place and manner of nominations shall be specified in the election ordinance adopted pursuant to Section 4 of this Article.

Section 4. Election Ordinance. An election ordinance, consistent with this constitution, shall be adopted by the council within six (6) months following the effective date of this constitution which shall set forth the procedures to be followed in conducting each of the various types of elections called for in this constitution. The election ordinance may be amended and/or revised at any time as needed. The ordinance shall include provisions for conducting all village elections by secret balloting, qualifications of candidates, maintenance of a current list of eligible voters, and the settling of election disputes by the election board to be appointed pursuant to Section 5 of this Article. The ordinance shall spell out the procedure and format to be used whenever it is necessary to submit petitions for any purpose to the council and set forth a procedure for which the election board established in Section 5 of this Article will determine the validity of such petitions.

Section 5. Election Board. The council shall appoint an election board to serve for three (3) years, whose duties shall be to supervise, administer, and conduct all village elections. The election board shall certify the election of village officials within five (5) days after the election. In the event of election disputes, the determination of the election board will be final. The election board will have the authority to determine the validity of petitions submitted to the council for any purpose in accordance with procedures developed in the election ordinance mandated in Section 4 of this Article. No member of the election board shall at the same time be a member of the council or a candidate for a position on the council.

ARTICLE VI - REMOVAL, RECALL AND FORFEITURE

Section 1. Removal. Any council member or other official found guilty by the council of behavior involving gross misconduct in office or neglect of duty shall be removed from office if at least four (4) members of the council vote in favor of such removal. Voting must be by secret ballot and the First Chief is entitled to vote. If the accused is a member of the council, the accused shall not have the right to cast a secret ballot. Before any vote for removal is taken, the person subject to removal shall be given a written statement of the charges against him/her at least ten (10) days before the meeting of the council at which he/she is to appear and he/she shall be given an opportunity to answer any and all charges against him/her at least ten (10) days before the meeting of the council at which he/she is to appear and he/she shall be given an opportunity to answer any and all charges at the designated council meeting. If the person subject to removal fails to appear before the council, the council shall proceed with the vote as scheduled. The decision of the council shall be final. No member of the council shall preside over the meeting at which his/her removal is being considered.

Section 2. Recall. Village members shall have the power to recall any member of the council. The recall process shall be initiated by filing with the council a valid petition asking for such recall, signed by at least thirty percent (30%) of the eligible voters, and setting forth the reasons for the petition. Within thirty (30) days after receipt of a valid recall petition, the council shall call and conduct an election to consider the recall of the official named in the petition.

The election shall be conducted pursuant to the election ordinance. Once an individual has been subjected to recall proceedings, he/she shall not again be subject to such action during the balance of his/her term in office.

Section 3. Forfeiture. If any member of the council shall be found guilty of a felony in any Federal or state court, shall die, resign, or is absent from four (4) succ matically forfeit his/her office.

ARTICLE VII - VACANCIES

Section 1. Any office which has been vacated, whether it be by removal, recall, or forfeiture, shall be filled by appointment of the council at its next meeting and such replacement shall serve the unexpired term of office.

ARTICLE VIII - POWERS

Section 1. The council shall have powers and responsibilities hereinafter provided, subject to any limitations imposed upon such powers by the statutes and laws of the United States.

(a) To consult, negotiate, contract, or conclude agreement with Federal, state, and local governments on activities which may affect the Native Village of Koyukuk;

(b) To employ legal counsel, the choice of counsel, and fixing of fees to be subject to the approval of the Secretary of the Interior or his/her authorized representative as long as such approval is required by Federal law;

(c) To receive advice from and make recommendations to the Secretary of the Interior with regard to all appropriation estimates for all projects which are for the benefit of village members of the Native Village of Koyukuk prior to the submission of such estimates to the Office of Management and Budget and Congress;

(d) To acquire property and to accept gifts;

(e) To prevent the alienating or other taking of village property without the consent of the village;

(f) To protect members' rights in personal property;

(g) To join and/or charter housing authorities;

(h) To charter enterprises, corporations, and associations;

(i) To administer the village's assets and manage all economic affairs and enterprises of the village, including the lease, sale, or other disposition of lands owned by the village;

(j) To promote the peace, safety, health, and general welfare of the members of the village;

(k) To enact ordinances and regulations consistent with this constitution for the conduct and administration of all tribal elections, the appointment of an election board and the regulations of its duties and the administration of justice;

(l) To administer justice by establishing a Village Court, and defining its duties and powers consistent with Federal law;

(m) To levy and collect taxes, fees and assessments for the village's purposes; and,

(n) To encourage and foster the arts, crafts, traditions, language, and culture of the village.

Section 2. The retained powers of the Native Village of Koyukuk not expressly referred to in this constitution shall not be lost by reason of their omission.

ARTICLE IX - POPULAR PARTICIPATION IN GOVERNMENT

Section 1. Initiative. The eligible voters of the village shall have the right to propose legislation and vote by secret ballot to determine whether it will be adopted or rejected. Upon receipt of a valid petition signed by at least thirty percent (30%) of the eligible voters, the council shall call an election to be conducted by the election board no later than thirty (30) days after receipt of the petition. An affirmative vote by at least a majority of the eligible voters shall be required to determine the issues or questions submitted to the voters.

Section 2. Referendum. The council, by an affirmative vote of at least four (4) of its members, shall call an election to be conducted by the election board within thirty (30) days of such council decision for the purpose of deciding by secret ballot issues or questions that are within the authority of the council. An affirmative vote by at least a majority of the eligible voters shall be required to determine the issues or questions submitted to the voters.

Section 3. The decision of the voters in both initiative and referendum elections shall be binding on the council and the village and shall remain in full force until amended or rescinded by subsequent action of the voters or expires by its own terms.

ARTICLE X - RIGHTS OF MEMBERS

Section 1. All members of the village shall enjoy, without hindrance, equal rights of life, liberty, and the pursuit of happiness.

Section 2. This constitution shall not in any way alter, abridge, or otherwise jeopardize the rights and privileges of the members of the village as citizens of the State of Alaska or the United States.

Section 3. Village members shall have the right to review all council records, including financial records, at any reasonable time in accordance with procedures established by the council.

Section 4. The Native Village of Koyukuk, in exercising its powers of self-government, shall not deny to any person within its jurisdiction freedom of speech, press, or religion, or the right to assemble peacefully. The tribal government shall not deny to any person the equal protection of tribal laws or deprive any person of liberty or property without due process of law. The tribe shall provide to all persons within its jurisdiction the rights guaranteed by the Indian Civil Rights Act of 1968.

ARTICLE XI - DUTIES OF OFFICERS

Section 1. Newly elected officers shall assume their respective office and duties immediately upon being elected and seated.

Section 2. The First Chief shall preside at all meetings of the community and of the council and shall execute on behalf of the village all contracts, leases, or other documents approved by the council. He/she shall vote in all cases except on the matter of his/her removal. He/she shall have general supervision of all other officers, employees, and committees of the community and see that their duties are properly performed. When the council is not in session, he/she shall be the official representative of the village.

Section 3. The Second Chief shall assist the First Chief when called upon to do so. In the absence of the First Chief, he/she shall preside and when so presiding shall have all the rights, privileges, duties and responsibilities of the First Chief.

Section 4. The Secretary/Treasurer shall keep the minutes of all meetings and shall attest to the enactment of all resolutions and ordinances. The Secretary/

Treasurer shall issue notices of all meetings and elections and conduct all general correspondence as directed by the council.

The Secretary/Treasurer shall carry out the financial directives of the council, receive all local monies and keep an accurate account of the receipts and disbursements. Funds shall be deposited in the Native Village of Koyukuk's accounts in a local bank selected by the council where depositor's funds are insured by the Federal Deposit Insurance Corporation (FDIC). All disbursements shall be made by check in accordance with resolutions of the council. In the event that total village accounts exceed $100,000 in deposits for the fiscal year, the Secretary/Treasurer shall file a bond satisfactory to the council. The council shall authorize payment of the annual bond premium from community funds. The Secretary/Treasurer shall give a financial report to the council once a month, and all financial reports shall be available for inspection by any member of the village. At the expiration of his/her term of office, the Secretary/Treasurer shall turn over all the records and papers in his/her possession to his/her successor or to the council.

ARTICLE XII - MEETINGS

Section 1. Regular meetings of the council shall be held monthly; the time, place, and date to be designated by the council.

Special meetings of the council may be called by the First Chief and shall be called by him/her upon receipt of a petition signed by at least four (4) members of the council and when so called, the council shall have power to transact business as in regular meetings, provided that a quorum is present.

Section 2. A quorum of the council shall consist of four (4) members of the council. No business shall be transacted unless a quorum is present.

Section 3. All meetings of the council shall be open to the general membership of the Native Village of Koyukuk; provided, however, that the council may recess at its discretion to discuss any matter in a closed or executive session, if the general subject matter to be discussed is expressed in the motion calling for such session and no final or official action is taken thereon in the closed or executive session.

Section 4. All final decisions of the council on matters of general or permanent interest to members shall be embodied in ordinances. The ordinances shall be collected and made available to village members and others affected upon reasonable request.

Section 5. All final decisions of the council on matters of temporary interest shall be embodied in resolutions. Resolutions shall be collected and made available to village members and others affected upon reasonable request.

Section 6. Regular meetings of the general membership of the Native Village of Koyukuk shall be held at least once annually. The date, time, and place of such meetings shall be first set by the First Chief and shall be called by him upon receipt of a petition signed by at least thirty percent (30%) of the village members.

Section 7. A quorum of the general membership shall consist of twenty-five percent (25%) of the voting members. No business shall be conducted unless a quorum is present.

ARTICLE XIII - SEVERABILITY

If any provision of this constitution shall, in the future, be declared invalid by a court of competent jurisdiction, the invalid provision shall be severed and the remaining provisions shall continue in full force and effect.

ARTICLE XIV - AMENDMENTS

Section 1. This constitution may be amended by a majority vote of the qualified voters of the Native Village of Koyukuk voting in an election called for that purpose by the Secretary of the Interior or his authorized representative, provided, that at least thirty percent (30%) of those entitled to vote shall vote in such election. No amendment shall become effective until approved by the Secretary of the Interior or his authorized representative.

Section 2. It shall be the duty of the Secretary of the Interior to call an election on any proposed amendment at the request of the council or upon receipt

of a petition signed by at least thirty percent (30%) of the qualified voters of the Native Village of Koyukuk.

ARTICLE XV - ADOPTION

This constitution, when adopted by a majority vote of the qualified voters of the Native Village of Koyukuk voting at an election called for that purpose by the Secretary of the Interior or his authorized representative in which at least thirty percent (30%) of those entitled to vote shall vote, shall be submitted to the Secretary of the Interior for his approval, and shall be effective from the date of his approval.

ARTICLE XVI - CERTIFICATE OF ADOPTION

Pursuant to an order issued on _____, 198___, by _____, Assistant Secretary - Indian Affairs, this constitution of the Native Village of Koyukuk, was submitted for adoption to the qualified voters of the Native Village of Koyukuk and was, on _____, 198___, duly adopted/rejected by a vote of _____ for, and _____ against, in an election in which at least thirty percent (30%) of the _____ members entitled to vote, cast their ballots in accordance with Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of May 1, 1936 (49 Stat. 1250).

_____
Chairman, Election Board

_____
Election Board Member

_____
Election Board Member

Date: _____

ARTICLE XVII - CERTIFICATE OF APPROVAL

In that this constitution was duly adopted as evidenced by Article XVI, I, _____, Assistant Secretary - Indian Affairs, by virtue of the authority granted to the Secretary of the Interior by the Act of June 18, 1934 (48 Stat. 984), as amended, and delegated to me by 209 DM 8.3, do hereby approve this constitution of the Native Village of Koyukuk. It is effective as of this date; provided, that nothing in this approval shall be construed as authorizing any action under this document that would be contrary to Federal Law.

_____
Assistant Secretary - Indian Affairs

Washington, D.C.

Date: _____